

**Testimony of
The Honorable Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management**

before the

**Subcommittee on Environment and Hazardous Materials
of the House Committee on Energy and Commerce**

on

**"Perspectives on Interstate and International Shipments of
Municipal Solid Waste"**

August 1, 2001

Introductory Remarks

Mr. Chairman and distinguished members of the subcommittee, I am pleased to testify on pending legislation that would vest states and local governments with the authority to control shipments of out-of-state municipal solid waste (MSW). As members of the subcommittee may know, Indiana's elected state officials and federal representatives have long been concerned that our state's efforts to manage the disposal of our solid waste, as required under federal law, are threatened by unconstrained flows of garbage from other states. I therefore appreciate the opportunity to offer comments on behalf of the State of Indiana on three bills, H.R.667, H.R.1213, and H.R. 1927, which were recently introduced in the U.S. House of Representatives to address this issue.

There continues to be a necessity for legislation that would give the states some ability to control the influx of out-of-state waste. Shipments of interstate municipal solid waste continue to rise nationally, and so does public concern. A recent Congressional Research Service report on interstate waste shipments noted that imports have more than doubled from 14.5 million tons in 1993 to 32 million tons in 2000, a 120% increase over 7 years. In Indiana, 1998 was a peak year for disposal of out-of-state waste. In that year, almost 2.2 million tons of out-of-state municipal

solid waste was disposed of at our MSW facilities, which are mostly landfills. Those 2.2 million tons of out-of-state waste represented 30% of the total amount of waste disposed of at our state's MSW facilities. Adding construction and demolition (C & D) debris and special waste, which are recorded separately, a total of 2.7 million tons of out-of-state waste was disposed of at Indiana MSW disposal sites in 1998 - - enough to cover two lanes of Interstate 95 from Washington, D.C. to Richmond, Virginia and back again with 10 feet of garbage. Since 1998 there has been a 40% drop in the amount of out-of-state municipal solid waste disposed of in Indiana. While this is certainly a good trend, waste imports remain very high and it is not a trend that can be guaranteed. The sporadic nature of waste flows could just as easily result in a significant increase in out-of-state waste next year.

Almost all of Indiana's out-of-state waste currently comes from neighboring states, with most shipments originating at transfer stations in the Chicago area and going to landfills in the northern portion of the state. A number of years ago, Indiana was deluged with garbage shipments from New Jersey and New York. However, through aggressive enforcement of state regulations concerning the types of waste allowed in landfills, negotiated agreements between Indiana and those two states, and the closure of several Indiana landfills receiving out-of-state waste, the flow was dramatically reduced. In fact, last year, no long-haul shipments of municipal solid waste from the East Coast were sent to any Indiana landfills.

While this situation could change, especially with the closure of the Fresh Kills landfill on Staten Island in New York, Governor Frank O'Bannon and I are chiefly concerned with ensuring that our administration and local officials gain the ability to control the overall amount of out-of-state waste shipments. Our primary goal is to protect our state's disposal capacity and natural resources; the origin of out-of-state shipments is not important.

At the present time, Indiana has approximately 17 years of in-state capacity based on current disposal rates, and the state's 61 solid waste management districts are working hard to reduce waste disposal. Indiana's efforts to manage in-state disposal capacity needs could easily be frustrated by an influx of out-of-state waste which could readily exhaust landfill capacity that has been saved through local recycling and waste reduction efforts. At the current rate of out-of-state waste shipments into Indiana, the capacity of our landfills could be reduced by three years. If Indiana was receiving out-of-state waste today at the 1998 rate, capacity would be reduced by eight years - almost one half of current projected capacity. It becomes difficult to make the case for waste reduction in Indiana as other states' garbage flows freely across our borders.

When, in 1990, out-of-state waste became an issue of public concern in Indiana, our state legislature passed several laws to protect our citizens against the unregulated importation of trash. These laws included a higher tipping fee for out-of-state waste and a requirement that out-of-state shipments be certified as not containing hazardous or infectious waste. A federal judge ruled that these laws violated the Commerce Clause of the United States Constitution and struck these provisions down.

A year later, in 1991, additional regulatory provisions were passed, including a ban on the hauling of food and other products in a vehicle also used to haul solid waste and an identification sticker for vehicles transporting waste into Indiana. These too were ruled unconstitutional. Today, we still have a law in place from 1990 that requires applicants for new landfills or expansions to demonstrate that there is a local or regional need for additional capacity. This "needs" statute has been used to deny permits on several occasions, but there is great concern that this law too will not withstand court challenge without federal legislative action.

After listening to today's testimony, I urge you to act to address this issue in a manner that carefully balances the concerns of state and local officials, the importance of protecting our natural resources, and the legitimate business interests of the waste industry. Congress could have and should have acted on this issue years ago when two former members of Congress from Indiana -- Senator Dan Coats and Congressman Phil Sharp -- labored long and hard to pass legislation. Indiana's current congressional delegation has demonstrated a united support for enacting a federal interstate waste law. In the House, Congressman Steve Buyer, a new member of this subcommittee, and Congressman Pete Visclosky, have helped to lead this bipartisan effort the last several years.

H.R. 1213, the "Solid Waste Interstate Transportation Act of 2001"

I believe that H.R. 1213, introduced by Congressman Jim Greenwood, represents a measured approach to providing states and localities with tools to limit but not eliminate out-of-state waste shipments.

There are five separate provisions within H.R. 1213 that Indiana could utilize today. The first is the presumptive ban that does not allow landfills to accept out-of-state waste unless authorized through a local host agreement, state permit, or an existing contract. The second is the authorization of a state to limit out-of-state waste amounts based on receipts in 1993. The third and most important of the provisions for Indiana is the recognition of the "Needs Law" that Indiana has used with some limited success but which is subject to challenge. The fourth provision provides that out-of-state waste can comprise, at a minimum, 20% of a state's total MSW. And the last provision is the ability for state's to impose a cost recovery surcharge on out-of-state waste to recoup the expenditure of tax dollars incurred as a result of the receipt of out-of-state waste.

Taken together, the provisions of H.R. 1213 do not eliminate altogether out-of-state waste shipments, which would be neither prudent nor necessary. They do, however, provide a mix of public notice requirements that will ensure public input in states' waste management programs and controls which can prevent unwanted floods of out-of-state trash.

H.R. 1927, the "Solid Waste International Transportation Act of 2001"

This legislation, introduced by Congressman Mike Rogers, is limited to dealing with solid waste originating from outside the United States. While such waste is not currently being disposed of in Indiana there have been periods of time in the past when Indiana received a significant number of shipments of solid waste from Canada. Specifically in 1991 Indiana received nearly 15,000 tons of solid waste from Canada. Due to the potential for importation of waste from Canada in the future and the impact such importation would have on landfill capacity, the State of Indiana supports the general concept of H.R. 1927. However, it is expected that H.R. 1213 would achieve the same goals without leading to a challenge of the International Trade Agreements as solid waste from both inside and outside the country would be subject to the same requirements.

H.R. 667, the "Solid Waste Compact Act"

This legislation, introduced by Congressman Paul Kanjorski, provides states the broad discretion to prohibit disposal of out-of-state waste provided the state has an approved State Plan under the federal regulations. While this legislation certainly provides states with the greatest flexibility in preventing out-of-state waste disposal it also provides the greatest potential for abuse of such authority. The legislation would allow a state to apply the prohibition statewide or to a specific landfill or incinerator. Such an approach does not recognize regional flows of solid waste, and while the greatest concern has been expressed relative to the import of waste into a state, every state also has communities near its borders which ship waste to a nearby landfill or incinerator in

an adjoining state. For example, last year Indiana generated and disposed of over 6.2 million tons of solid waste within its borders. Indiana shipped less than 5% of that amount to surrounding states. It is expected that if H.R. 667 were enacted, a significant amount of negotiation between states would likely occur to develop interstate compacts relative to solid waste imports and exports. For Indiana significant staff resources would be required to negotiate with our four contiguous sister states. By comparison H.R. 1213 provides adequate guidance in the controls and limitations that may be used to restrict out-of-state waste so that interstate compacts would not be necessary.

Conclusion

I appreciate the interest of Chairman Gillmor and other subcommittee members in convening today's hearing and hope this is only a first step leading to enactment of legislation. Repeated and strenuous efforts to negotiate a settlement between major importing and exporting states -- most recently involving Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Virginia two years ago -- have failed to produce any meaningful solution.

I recognize that this subcommittee must weigh the interests and concerns of all 50 states and the private sector when considering a matter involving interstate commerce. On this issue, however, I am hopeful that you and your colleagues will agree that states should be allowed to exercise a reasonable set of controls to protect their natural resources and solid waste disposal capacity, and ensure public support for their own waste reduction efforts. Governor O'Bannon and I believe Congress should not indefinitely delay legislative action.

Thank you again for allowing me to share the State of Indiana's concerns about this important public policy matter.